

REFERENCE TITLE: railroad sites; review

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2156

Introduced by
Representatives Paton, Pancrazi

AN ACT

AMENDING SECTIONS 40-321 AND 40-809, ARIZONA REVISED STATUTES; RELATING TO RAILROADS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 40-321, Arizona Revised Statutes, is amended to
3 read:

40-321. Power of commission to determine adequacy of service rendered by public service corporation; enforcement by order or regulation; duty of compliance by corporation; surety; utility surety fund; railroad eminent domain review; railroad review fund

9 A. When the commission finds that the equipment, appliances,
10 facilities or service of any public service corporation, or the methods of
11 manufacture, distribution, transmission, storage or supply employed by it,
12 are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the
13 commission shall determine what is just, reasonable, safe, proper, adequate
14 or sufficient, and shall enforce its determination by order or regulation.

15 B. The commission shall prescribe regulations for the performance of
16 any service or the furnishing of any commodity, and ~~upon~~ ON proper demand and
17 tender of rates, the public service corporation shall furnish the commodity
18 or render the service within the time and upon the conditions prescribed.

19 C. If, after notice and an opportunity to be heard, the commission
20 finds that a public service corporation is in default of the terms and
21 conditions of an order of the commission that requires a performance bond,
22 irrevocable letter of credit or other surety, and the commission exercises
23 its rights under the bond, letter or other surety, the commission shall
24 deposit all monies received as a result of exercising the rights in the
25 utility surety fund established by subsection D of this section.

26 D. The utility surety fund is established consisting of monies
27 received by the commission pursuant to subsection C of this section. Monies
28 in the utility surety fund shall be administered by the commission for the
29 benefit of the customers of the public service corporation who have incurred
30 a loss of services or commodities or for deposit support pursuant to this
31 section. Monies in the fund are continuously appropriated to the commission
32 and do not revert to the state general fund pursuant to section 35-190.

33 E. THE COMMISSION MAY REVIEW ANY EXISTING OR PROPOSED RAIL PROJECT BY
34 A RAILROAD ON LAND ACQUIRED OR TO BE ACQUIRED BY EMINENT DOMAIN, THREAT OF
35 EMINENT DOMAIN OR AUCTION TO DETERMINE WHETHER THE RAILROAD HAS EXAMINED
36 ALTERNATIVE LOCATIONS AND HAS CHOSEN A SITE OR ROUTE THAT MINIMIZES NEGATIVE
37 AIR QUALITY, NATURAL RESOURCE, WATER AND ECONOMIC IMPACTS AND NEGATIVE
38 IMPACTS ON HISTORICAL, ARCHEOLOGICAL OR GEOGRAPHIC LANDMARKS OR CRITICAL
39 INFRASTRUCTURE. IF THE COMMISSION REQUIRES A REVIEW, THE RAILROAD SHALL
40 CONTRACT FOR ASSESSMENT BY QUALIFIED THIRD PARTIES ON THE NEGATIVE IMPACTS
41 FOR CONSIDERATION OF ALTERNATIVES TO THE LOCATION OF THE PROJECT. THE
42 ASSESSMENT SHALL ADDRESS WHETHER THE PROJECT MINIMIZES THE NEGATIVE IMPACTS.
43 THE RAILROAD SHALL PRESENT THE ASSESSMENT TO THE COMMISSION FOR REVIEW. THE
44 COMMISSION MAY SUGGEST ONE OR MORE LOCATIONS IN THE AREA OF THE PROJECT THAT
45 WOULD HAVE LESSER IMPACTS AND THAT COULD ACCOMMODATE THE RAILROAD. THE

1 COMMISSION MAY ASSESS AND COLLECT FROM THE RAILROAD FEES FOR THE REVIEW AND
2 ANY OTHER NECESSARY COSTS OF THE COMMISSION. THE RAILROAD REVIEW FUND IS
3 ESTABLISHED CONSISTING OF FEES COLLECTED BY THE COMMISSION PURSUANT TO THIS
4 SUBSECTION. THE COMMISSION SHALL ADMINISTER THE FUND. MONIES IN THE FUND
5 ARE CONTINUOUSLY APPROPRIATED TO THE COMMISSION FOR THE PURPOSES OF THIS
6 SUBSECTION AND DO NOT REVERT TO THE STATE GENERAL FUND PURSUANT TO SECTION
7 35-190. THE COMMISSION SHALL REFUND TO THE RAILROAD ANY UNUSED PORTION OF
8 THE FEES COLLECTED. IF THE COMMISSION REQUIRES A REVIEW, IT SHALL HOLD AT
9 LEAST ONE PUBLIC HEARING AND CONSIDER PUBLIC COMMENTS ON THE IMPACTS IN
10 COMMUNITIES AFFECTED BY THE PROJECT. FOR THE PURPOSES OF THIS SUBSECTION,
11 "CRITICAL INFRASTRUCTURE" MEANS ANY INFRASTRUCTURE THAT IF DAMAGED OR
12 NEGATIVELY IMPACTED WOULD WEAKEN OR THREATEN THE INTEGRITY OF HOMELAND
13 SECURITY IN THIS STATE OR THE UNITED STATES IN WHOLE OR IN PART.

14 Sec. 2. Section 40-809, Arizona Revised Statutes, is amended to read:
15 40-809. Specific powers of railroad corporations

16 A. Railroad corporations may:

17 1. Make surveys and select routes for railroad and telegraph lines,
18 and for that purpose, enter upon private and public lands and waters, subject
19 to responsibility for all damage caused thereby.

20 2. Lay out the railroad not exceeding two hundred feet wide, and
21 construct and maintain it with single or double track, with facilities the
22 directors deem necessary for the convenient use thereof.

23 3. Construct the railroad and telegraph lines across, along or upon
24 any stream of water, ~~water-course~~ WATERCOURSE, street or highway, or across
25 any railway, canal, ditch or flume which the lines intersect, cross or run
26 along. The corporation shall restore them to their former state as near as
27 possible in order not to impair their use or injure the franchises of others
28 unnecessarily.

29 4. Cross, intersect or unite the railroad with any other railroad
30 theretofore constructed at any points on the route thereof, and upon the
31 premises of the other railroad, with the ~~turn-out~~ TURNOUT, sidings, switches
32 and other conveniences necessary to make and complete the intersections and
33 connections. The railroads shall unite in making the intersections and
34 connections and the facilities therefor upon terms agreed upon between them,
35 but, if they are unable to agree upon the compensation therefor, or the
36 points at which, or the manner in which the intersections and connections
37 shall be made, the compensation shall be ascertained and declared in the
38 manner provided by law relating to eminent domain for taking private property
39 for use of such corporations.

40 5. Take lands and materials to be used in the construction and
41 maintenance of railroad and telegraph lines in the manner provided by law
42 relating to eminent domain in the event such lands and materials cannot be
43 obtained by agreement with the owners thereof. **IF LAND IS TAKEN OR IS TO BE**
TAKEN BY EMINENT DOMAIN, THREAT OF EMINENT DOMAIN OR AUCTION, THE RAILROAD

1 SHALL SUBMIT A REVIEW AND ASSESSMENT IF REQUIRED BY THE CORPORATION
2 COMMISSION PURSUANT TO SECTION 40-321, SUBSECTION E.

3 6. Transport persons and property on their railroad and collect
4 compensation therefor.

5 7. Take and enjoy by purchase, donation or condemnation as provided by
6 law relating to eminent domain, natural springs and streams of water, or as
7 much thereof as necessary in operating the railroad, together with the
8 right-of-way thereto for pipes, ditches, canals and aqueducts for
9 transporting the water thereof.

10 8. Regulate the speed of locomotives or other machinery used on the
11 railroad, and establish, execute and enforce all useful regulations for
12 management of its trains and business, and for securing the comfort, safety
13 and good behavior of passengers, employees and agents, and for prevention and
14 suppression of gambling on its cars.

15 9. Expel from its cars, using no more force than necessary, any
16 passenger who upon demand refuses to pay his fare or who behaves in a rude,
17 riotous or disorderly manner toward other passengers or the employees of the
18 corporation in charge of the cars, or, upon his attention being called
19 thereto, persists in violating the rules of the corporation against gambling
20 on the cars.

21 B. For the purposes of making embankments, excavations, ditches,
22 drains, culverts and similar works, and of procuring timber, stone, gravel
23 and other materials for the construction and security of the railroad, the
24 corporation may take and occupy as much more land as necessary or convenient
25 for such purposes.

26 C. If a railroad company's right-of-way, track or roadbed upon its
27 right-of-way passes through a canyon, pass or defile, it shall not prevent
28 any other railroad from occupancy and use of the canyon, pass or defile in
29 common with the railroad first located, or the crossing of other railroads at
30 grades. Necessary expenses shall be equitably divided between the railroads
31 occupying and using the same canyon, pass or defile.

32 Sec. 3. Exemption from rule making

33 For the purposes of this act, the corporation commission is exempt from
34 the rule making requirements of title 41, chapter 6, Arizona Revised
35 Statutes, for one year after the effective date of this act.

36 Sec. 4. Retroactivity

37 This act applies retroactively to from and after December 31, 2007.